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**TO:** Michael Powell, Chairman

**Company:** FCC

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**Date:** October 23, 2002

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☐ URGENT ☒ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

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Leading Optical Innovations

**To:** Michael Powell  
Chairman  
Federal Communications Commission

**From:** Eddie Edwards  
President and Chief Executive Officer  
OFS

**Date:** October 23, 2002

**Re:** Pending Broadband Regulations

CC Dkt No 01-338

CC Dkt No. 96-98

CC Dkt No. 98-447

As the second largest global supplier and a leader in optical fiber, cable and component technology, **OFS** commends and supports the Federal Communications Commission's (FCC) efforts to reform outdated U.S. telecommunications laws. OFS is profoundly affected by severely diminished broadband investment and industry uncertainty resulting from these laws.

We know that by **January**, the FCC expects to act on **three proposals** for broadband regulatory reform centered **around** the Non-dominance Proceeding, the UNE Triennial Review Proceeding **and** the Defining ILEC Internet Access Proceeding.

We're concerned **that** the Commission's proposed regulations fail to differentiate between **new** and existing broadband deployment **and** between broadband and **non-**broadband services. Instead, the Commission appears focused primarily on the organizational nature of the service provider. We believe that moving forward with the regulations without addressing this distinction will be a policy mistake that will lead to further confusion, inequity **and** instability in the market.

In order to increase deployment of bandwidth to consumers and increase investment in bandwidth, regulations **must** be designed to minimize costs and difficulties associated with all new broadband deployments regardless of the organizational nature of the service provider. This goal can best be accomplished by deregulating all new broadband deployments.

Specifically regarding the three issues currently pending before the Commission:

#### **I. Non-Dominance Proceeding**

We think the proposed rule questioning whether telephone companies should be considered "dominant" in the provision of broadband services is off-target. With digital

technology, all broadband services are, by their nature, information services. Digital voice, video, and data bits **are** indistinguishable. This reality needs to be reflected in the new regulations.

To date, incumbent carriers' (ILEC) legacy networks have provided only marginal advantage over telecommunications service competitors (CLECs and IXCs) given that ILECs **must** themselves invest in new equipment and open all their broadband facilities to competitors. **At** the same time, Cable Television organizations (MSOs), whose deployment of broadband is deregulated, **have** generated **true** facilities-based competition. ILEC telecom incumbency **has** not resulted in a broadband advantage while lack of regulation has given MSOs a significant broadband lead. By investing in broadband infrastructure, MSOs have achieved about **75%** market share in contrast to the **25%** of the broadband market captured by telecom carriers.

Clearly, ILEC historic telecommunications dominance has not carried over into broadband dominance.

## **2. To what extent should ILEC competitors have the right to demand and receive unbundled "pieces" of the ILEC's network at special rates under the UNEs TELRIC pricing regulations?**

ILEC's historic dominance in telecommunications services and their existing access networks has led to the deployment of dial-up modem and broadband DSL services under UNE regulations. **As** a result, a large and vital CLEC **and** ISP industry **has** developed which provides significant competition among DSL, voice, and dial-up internet service providers and the associated consumer benefits of provider choice. This important industry segment **is** dependent upon using existing unbundled ILEC network elements based on TELRIC pricing.

OFS thinks **that** the current UNEs and TWC pricing scheme should be kept in place and not modified for all non-broadband telecommunication service applications **as** well as all *existing* broadband deployments where UNEs are already being **utilized**. However, since ILECs are clearly not dominant in broadband services and since **existing** UNE and TELRIC regulations only diminish investment in *new* broadband deployment, **OFS supports** creating a "carve out" from the status quo for all **new** broadband activity including converged voice, data, **and** video services. New broadband needs to be fully deregulated for true facilities-based competition to develop rather **than** just consumer choice among service providers offering **similar** services on similar equipment (the current telecom competitive situation with CLECs offering TELRIC-based price and provider choice).

As written, the regulations make no distinctions between *new* broadband and existing broadband deployment and between voice and dial-up modem telecommunications services **and** converged voice, video, and data broadband information services. We strongly recommend deregulation of all **new** broadband deployment, regardless of

services carried, while maintaining the status quo on existing broadband and telecommunications services to ensure the survival of CLECs and ISPs.

### 3. Legal Definition of ILEC broadband services.

We believe **that** broadband is inherently **an** "information service" where all digital bits, whether voice, video, or data, are equal. This **is** distinct **from** traditionally defined voice-oriented telecommunications service where either analog or digital circuit-switched voice or dial-up data services are provided.

One of the greatest advantages brought by today's DSL and Cable Modem and tomorrow's Fiber-to-the-Home (FTTH) services is their ability to **carry** converged voice, video, and high-speed data services over a single network. While historic ILEC incumbent networks provide clear advantage in the provision of narrowband voice **and** dial-up modem telecommunications services, they provide **no** such advantage in the deployment of new converged voice, video and data broadband information services. Thus, though broadband information services will naturally include voice **traffic**, they are quite distinct **from** ILEC telecommunications services.

Therefore, OFS believes that any "converged" broadband service (i.e. where you **have** the capability for voice, video and/or high-speed data sharing the **same** lines) should **be** defined as an information service regardless of which converged services are offered.

We believe that **unless** the proposed regulations **are** modified to **make** a clear-cut distinction between new broadband and existing broadband services, both the telecommunications industry and its customers will be ill-served. Without the distinction, regulatory reform **will** be unable to achieve the goal of promoting new bandwidth deployment and broadband investment, and **will** significantly harm existing competition by impeding the ability of the CLECs and independent **ISPs** to remain in business.

Finally, while we believe that modification of the regulations to deregulate **all** new broadband deployment will go a long way toward improving the condition of **the** telecommunications industry, the proposed rules cover only a subset of the **entire** telecommunications policy dilemma. By excluding issues such as reciprocal compensation, interLATA data transport, state regulation of broadband and a number of other significant policy issues, the regulatory playing field still remains somewhat undefined. OFS believes the most effective path to necessary reform is for the Bush Administration to unveil a comprehensive high-speed Broadband policy that balances the needs of **all** **parties** and is designed to **keep** the United States at the fore of developing new broadband technology and applications

We appreciate your attention to our comments and would welcome the opportunity to discuss **our** concerns with you directly. I can be reached at 770/798-4265.